

§51.219

(LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such services, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider's request.

(e) *Disputes*—(1) *Disputes involving nondiscriminatory access.* In disputes involving nondiscriminatory access to operator services, directory assistance services, or directory listings, a providing LEC shall bear the burden of demonstrating with specificity:

(i) That it is permitting nondiscriminatory access, and

(ii) That any disparity in access is not caused by factors within its control. "Factors within its control" include, but are not limited to, physical facilities, staffing, the ordering of supplies or equipment, and maintenance.

(2) *Disputes involving unreasonable dialing delay.* In disputes between providing local exchange carriers (LECs) and competing providers involving unreasonable dialing delay in the provision of access to operator services and directory assistance, the burden of proof is on the providing LEC to demonstrate with specificity that it is processing the calls of the competing provider's customers on terms equal to that of similar calls from the providing LEC's own customers.

[61 FR 47350, Sept. 6, 1996, as amended at 64 FR 51911, Sept. 27, 1999]

EFFECTIVE DATE NOTE: At 64 FR 51911, Sept. 27, 1999, §51.217 was amended by revising paragraph (c)(3). This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§51.219 Access to rights of way.

The rules governing access to rights of way are set forth in part 1, subpart J of this chapter.

§51.221 Reciprocal compensation.

The rules governing reciprocal compensation are set forth in subpart H of this part.

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§51.223 Application of additional requirements.

(a) A state may not impose the obligations set forth in section 251(c) of the Act on a LEC that is not classified as an incumbent LEC as defined in section 251(h)(1) of the Act, unless the Commission issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent LECs.

(b) A state commission, or any other interested party, may request that the Commission issue an order declaring that a particular LEC be treated as an incumbent LEC, or that a class or category of LECs be treated as incumbent LECs, pursuant to section 251(h)(2) of the Act.

§51.230 Presumption of acceptability for deployment of an advanced services loop technology.

(a) An advanced services loop technology is presumed acceptable for deployment under any one of the following circumstances, where the technology:

(1) Complies with existing industry standards; or

(2) Is approved by an industry standards body, the Commission, or any state commission; or

(3) Has been successfully deployed by any carrier without significantly degrading the performance of other services.

(b) An incumbent LEC may not deny a carrier's request to deploy a technology that is presumed acceptable for deployment unless the incumbent LEC demonstrates to the relevant state commission that deployment of the particular technology will significantly degrade the performance of other advanced services or traditional voiceband services.

(c) Where a carrier seeks to establish that deployment of a technology falls within the presumption of acceptability under paragraph (a)(3) of this section, the burden is on the requesting carrier to demonstrate to the state commission that its proposed deployment meets the threshold for a presumption of acceptability and will not, in fact, significantly degrade the performance of other advanced services or traditional voice band services. Upon a